

REMARKS

Claims 2-24 are pending in the Application. Claims 3-11 and 15-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant cancelled claims 2, 13 and 14 without prejudice or disclaimer. Hence, claims 3-12 and 15-24 are pending. Applicant reserves the right to file a continuation application to capture the subject matter of cancelled claims 2, 13 and 14.

Applicant amended claims 3 and 15 to be rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant further amended claims 12 and 24 to be dependent upon allowable subject matter, namely claims 3 and 15, respectively. Consequently, Applicant asserts that claims 3-12 and 15-24 are allowable. Applicant respectfully requests the Examiner to issue a notice of allowance allowing claims 3-12 and 15-24.

Applicant notes that claims 3 and 15 were not amended to overcome prior art but to be written in independent form. Applicant further notes that claims 12 and 24 were also amended not to overcome prior art but to provide consistency with the cancellations of claims 1 and 13. Hence, the amendments made to claims 3, 12, 15 and 24 were not narrowing in scope and therefore no prosecution history estoppel arises from the amendments to claims 3, 12, 15 and 24. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-12 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendments made to claims 3, 12, 15 and 24 were not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such amendments. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

The Examiner has rejected claim 2 under 35 U.S.C. §102(b). The Examiner has further rejected claims 12, 13, 14 and 24 under 35 U.S.C. §103(a). As stated above, claims 2, 13 and 14 are cancelled without prejudice or disclaimer and claims 12 and 24 are amended to become dependent upon allowable subject matter. Hence the rejections to these claims are moot.

II. CONCLUSION:

As a result of the foregoing, it is asserted by Applicant that claims 3-12 and 15-24 in the Application are in condition for allowance, and respectfully requests an allowance of such claims. Applicant respectfully requests that the Examiner call Applicant's attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorney for Applicant

By: _____

Kelly K. Kordzik
Reg. No. 36,571

P.O. Box 50784
Dallas, Texas 75201
(512) 370-2851

Austin_1 292023v.1